



Monday, June 2, 2003
DOT 48-03

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USDOT Changes Drug Testing Rule To Increase Employee Safeguards

The U.S. Department of Transportation has issued an interim final rule (IFR) to prevent employees in transportation industries who may naturally produce highly dilute urine specimens from being unfairly found to have violated the Department's regulations. The rule expands the definition of "dilute tests" and changes the amount of a chemical called creatinine in a urine specimen that triggers a finding that the individual has refused to take a drug test. The new rule takes effect immediately.

"Based on the our drug testing experience and recent scientific and medical information, we have concluded that we should change the way we treat highly dilute specimens," said Ken Edgell, Acting Director of the Department's Office of Drug and Alcohol Policy Compliance. "We want to take every precaution to ensure that a transportation employee cannot be charged unfairly with having substituted some other substance for his or her urine specimen."

Under current USDOT rules, which are directly taken from the Department of Health and Human Services (HHS) program documents, a urine specimen with five milligrams of creatinine per deciliter of urine or less is regarded as "substituted." This criterion is based on a review by HHS of scientific literature suggesting that people cannot naturally produce urine with lesser amounts of creatinine. A "substituted" test is considered a refusal to take a drug test, a violation of USDOT rules equivalent to failing a drug test.

USDOT has encountered a small number of cases in which individuals may have legitimate medical or physiological explanations for producing specimens with lower levels of creatinine. In addition, medical and scientific experts now believe that some highly dilute specimens should not necessarily trigger a violation of the rules. The USDOT's expanded category of dilute specimens includes those containing two to 20 milligrams of creatinine per deciliter.

While HHS considers whether to change the creatinine levels for which laboratories test, the Department is taking this interim step to protect employees. When a laboratory reports a specimen as substituted, that is, five milligrams of creatinine per deciliter or less, the medical review officer (MRO) will consider the specimen to be "dilute" if the creatinine concentration is two milligrams per deciliter of urine or higher. Dilute specimens will not cause the employee to be regarded as violating the regulation. However, employees who provide dilute specimens in the two- to five-milligram-per-deciliter range will have to undergo an unannounced immediate re-collection under direct observation, as a safeguard for the integrity of the testing program.

The Department issued the rule on May 28 and is requesting public comments by Aug. 26, 2003. Comments should refer to Docket Number (OST-2003-15245). Comments may be sent to the Docket Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, S.W., Washington, DC 20590-0001 or electronically to <http://dms.dot.gov/>.

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